

**U.S. Department of Homeland Security
The Homeland Security Advisory Council**

**A Report from the Task Force on State and
Local Homeland Security Funding**

June 2004

HOMELAND SECURITY ADVISORY COUNCIL

Task Force on State and Local Homeland Security Funding

Executive Summary

Due to the realities of the post-9/11 environment, the mission of providing the necessary resources to local¹, state and tribal governments and first responders is an urgent one. Unfortunately, obstacles have developed in the current mechanisms and infrastructure used to do so. In response to this, Homeland Security Secretary Tom Ridge formed the Task Force on State and Local Homeland Security Funding to examine why federal funds were not reaching local governments and first responders in a timely fashion. The Task Force was established to develop consensus-based solutions, not to assign blame. To that end, on June 10, 2004 the Task Force unanimously adopted this report.

This Task Force consists of several governors, mayors, county officials, tribal leaders and other elected or appointed officials from throughout the country. The Task Force was brought together on a bipartisan basis to examine the funding process and to provide specific recommendations to expedite the flow of homeland security dollars to those responsible for preventing and responding to acts of terrorism.

By working closely with the Department of Homeland Security (DHS) and stakeholders at every level of government, the Task Force was able to solicit input from many sources and thoroughly examine the issues. Common themes began to surface and recommendations were developed as a result of several key findings that include:

- The reimbursement requirement is problematic for many, particularly for cash-strapped municipalities.
- Ordinary procurement and cash management processes cannot be relied upon in extraordinary times – At times, the need to rapidly procure and deploy homeland security-related equipment conflicts with state and local buying regulations and procurement procedures.
- Many state and local governments lack the purchasing power to obtain the goods and services in a timely fashion.
- The lack of national standards guiding the distribution, tracking, and oversight of homeland security-related grant funds contributes to delays in disbursement.
- While development of program guidelines and long-term operational plans is important, there are urgent security needs that must be addressed now, such as overtime reimbursement and risk-based funding.
- State and local governments are often overwhelmed and understaffed to deal with the complex grant system and have not put the necessary infrastructure in place to deal with the increased workload.
- Communication gaps have existed between all levels of government.

¹ For the purposes of this report the term “local” refers to towns, municipalities, villages and counties.

- The management of expectations is a major issue; local jurisdictions have expectations that may be unrealistic given the limited amount of funding available.
- Unavoidable equipment backlogs and vendor delays have slowed the process.

We underscore in this report that there is no single issue or level of government that has been responsible for the delays. Rather, it appears that there are several interdependent issues that have compounded one another to slow the funding stream. The purpose of this report is not to assign blame but to identify opportunities to strengthen and expedite the funding process. Having to protect against and prepare for terrorist attacks is a relatively new mission and responsibility for many of the grant recipients. The end result is a grant process that has evolved under a microscope without the benefit of the normal program development or evolution afforded similar programs over the years -- and we may not have time for that. Therefore, the Task Force has issued recommendations that include:

- For Federal Fiscal Year (FFY) 05, exempt ODP homeland security grants from the Cash Management Act of 1990. This provision governs the reimbursement requirement for federal grants and needs to be changed, because many cash-strapped municipalities and counties have difficulty participating in the reimbursement process.
- Where applicable, encourage state and local governments to alter legislative and procurement procedures to accept and expend homeland security funds on a more expedited basis.
- Establish multi-state cooperative purchasing consortia and expand the use of state and federal contracts.
- Establish national standards for grant management including standardized terminology and real-time tracking capabilities.
- Compile and disseminate best practices. For example, many states have shown innovation by assembling working groups, or by using secure web technology to interface between the state and the local governments regarding grant information. Every locality should be encouraged to develop similar programs.
- Amend the federal grant regulations to allow grantees more flexibility in expending administrative funds.
- Expand and enhance the level of training and technical assistance to state and local officials involved in the management and administration of homeland security related grants.
- Strongly encourage regionalization and cooperation among stakeholders similar to the Urban Areas Security Initiative (UASI) Grant Program.
- Establish an Office of the Comptroller within DHS to assume complete financial responsibility over the grant programs.
- Congress should expand the use of State Homeland Security Grant Funds to allow state, county, local and tribal governments to use such funds for operational costs including overtime.

- Establish a comprehensive risk assessment methodology to support the identification of high-risk, high consequence critical infrastructure and major events - and - allow grant funds, distributed through states, to be used to directly offset the costs incurred by state, county, municipal, and tribal entities for securing those critical infrastructure and major events identified as high-risk by DHS including incremental personnel costs such as over-time payments for safety forces.

The Task Force recognizes the continuous improvements that have been made at the federal level. DHS has worked to streamline the grant process, increase partnerships among stakeholders and improve outreach efforts through projects such as this Task Force. Guidance and support from the federal level is essential, but state and local governments have to be engaged in this process and make their own changes as well. Now that problems with the system have been identified, all levels of government will have to work together to resolve them. We have indeed come a long way since 9/11, but the job of protecting our homeland will never end. Our mission continues.

Introduction

On March 15, 2004, amid growing concern that federal homeland security grant funds were not reaching local² governments in a timely manner, Homeland Security Secretary Tom Ridge established the Task Force on State and Local Homeland Security Funding (Task Force). The Secretary asked governors, city and county elected and appointed officials, tribal leaders and other senior local officials to serve as members of the Task Force. Each member was selected due to their first-hand experience in executing prevention, protection, and emergency response operations and in managing homeland security issues. During the first conference call, Task Force members selected the Honorable Mitt Romney, Governor of the Commonwealth of Massachusetts to serve as Chairman and the Honorable Donald Plusquellic, Mayor of the City of Akron, Ohio to serve as the Vice Chair.³

Secretary Ridge asked the Task Force to:

- Examine the funding process related to “first responders;”
- Examine and Catalog best practices; and
- Provide specific recommendations to eliminate “*choke points*” that impede the timely distribution of the funds to first responders.

The Task Force was unanimous in its view that two important principles should guide its work. **First and foremost**, there is no greater priority than ensuring that the men and women who serve on the front lines of our domestic war on terrorism have the equipment and resources they need to protect our communities from future attacks. And, while program analysis and future planning is important to ensure that the nation’s homeland security programs are effective and efficient, there exists an urgent need to provide training, equipment, information and financial support to those who are responsible for detecting, preventing, responding to and managing the consequences of a terrorist attack.

Second, the goal should not be about assigning fault or blame. Rather the Task Force focused on identifying opportunities to fix both actual and perceived problems in the process used to distribute these critical funds to those entities responsible for preventing and responding to acts of terrorism. The ultimate goal was to make recommendations that lead to measurable improvements in America’s readiness to deal with a spectrum of potentially catastrophic threats.

Over a sixty day period, Task Force members reviewed a significant amount of data regarding the distribution of funds allocated in FFY 02 and FFY 03 by DHS to state,

² For the purposes of this report the term “local” refers to towns, municipalities, villages and counties.

³ A detailed list of Task Force members and staff points of contact are attached to this report as Attachment One.

county, municipal and tribal governments. The Task Force focused its examination solely on the funding provided through the FFY 02 State Domestic Preparedness Grant Program, the FFY 03 State Homeland Security Grant Program and its supplemental appropriation, and FFY 03 Urban Areas Security Initiative programs. The Task Force's scope was limited to these program areas to facilitate a rapid but thorough analysis and because DHS has just awarded FFY 04 Office for Domestic Preparedness (ODP) grants.

Between March 15, 2004 and May 15, 2004, the Task Force met three times in Washington, DC and held eight conference calls. The members of the Task Force reviewed information pertaining to the distribution of these funds that was provided by the DHS ODP.

The Task Force also reviewed other recent surveys of homeland security grant funding including an audit produced by the DHS Inspector General entitled: "An Audit of Distributing and Spending First Responder Grant Funds" (2004), and the United States General Accounting Office's "Emergency Preparedness Federal Funds for First Responders," (2004).

Seeking even more qualitative information, the Task Force distributed a survey to eleven states ⁴ and one territory. The Task Force also conducted a survey of state procurement officials in cooperation with the National Association of State Procurement Officials (NASPO). The results of this survey provided the Task Force insight into the particular procurement issues associated with the utilization of these grant funds.

Based on the above, the Task Force developed the findings and recommendations included in this report. On June 10, 2004 the Task Force unanimously adopted this report.

Background

Following the horrific attacks of September 11, 2001, the Federal Government made available to state, county, municipal and tribal governments a significant amount of funds for the purpose of preparing for and responding to terrorist acts. Concurrently, state, tribal and local governments also increased their spending to address urgent, non-federally funded priorities associated with the post 9/11 environment. These unplanned increases in spending occurred at the same time that many state, tribal and municipal governments faced fiscal and/or budgetary crisis due to a national economic downturn.

The expressed purpose of this funding was to enhance state, tribal and local capabilities to detect, prevent, respond to and manage the consequences of terrorist attacks.

⁴ CA, DE, FL, IA, ID, MA, NE, NJ, NY, OH, VA and Guam.

Between FFY 02 and FFY 03, DHS ODP awarded over \$3.3 billion to state, tribal and local agencies (this represents but a portion of funds provided by the federal government to state, county, municipal and tribal entities for these purposes).⁵

By law, these funds⁶ were only to be used to reimburse state, tribal, county and municipal governments for costs incurred as a result of authorized equipment acquisition, planning, operations, training, management and administration and exercise-related activities. After receiving grant awards from DHS, state and territorial governments were responsible for distributing these funds to county, municipal and tribal governments. By law, states had to make these funds available for use by county, municipal and tribal governments within a pre-determined time period. Typically, the period of performance for these grants was two years. It was envisioned that the funds intended for the purchase of specialized response equipment would be spent promptly whereas expenditures for training and exercises would be spent over the two year period. Federal regulations required that state and territorial governments manage, track and oversee the use of these funds by county, municipal and tribal governments.⁷

General Observations and Comments

The grant process is not as expeditious as many think it should be for several reasons – The homeland security mission is an enormous and unprecedented one, requiring close and continuous coordination and integration at the federal, state, tribal, county, municipal and private sector levels. DHS grant programs have fostered, and at times required, through such programs as UASI, a new level of collaboration at all levels of government with respect to planning, operations and information sharing. This alone has had a positive impact on national preparedness and security.

DHS fulfilled its statutory requirement to “obligate” or make funds available for use by state governments within the timeframe required by law. Additionally, for the most part, state governments met their statutory deadlines to “obligate” or make these funds available for use by county, municipal, and tribal entities within the timeframe required by law.

⁵ The FFY 04 ODP funds were not subject to review by the Task Force because the funds have just been awarded by DHS. Nor did the Task Force review the over \$2 billion dollars allocated or awarded by the Transportation Security Administration or the Federal Emergency Management Agency, both now a part of DHS. The FFY 04 ODP grants will total over \$3 billion, bringing the combined FY 02-04 DHS-wide funding to state and municipal governments to well over \$8 billion. Additional funding provided to state and municipal governments by other federal departments (DOJ, HHS, etc...) to offset the costs of homeland security related activities were not included in this review.

⁶ Distributed through the FFY 02 State Domestic Preparedness Grants, the FFY 03 Omnibus and Supplemental State Homeland Security Grants and the FFY 03 Omnibus and Supplemental Urban Area Security Initiative Grants.

⁷ A summary of the FFY 03 grant processes are include as Attachment Two to this report.

However, while statutory deadlines for “obligating” or making these funds available for use by county, municipal and tribal governments were met, it is important to understand, that “obligation” is not synonymous with “expenditure.” Significant obstacles stood in the way of these funds being quickly spent and therefore “drawn down” from the federal treasury by state, county, municipal and/or tribal entities. These obstacles included:

- State, county and municipal administrative, procurement and legislative procedures;
- Provisions of the Cash Management Act of 1990 requiring grants be disbursed on a reimbursement basis coupled with insufficient fiscal capacity of localities to fund expenditures;
- Lack of personnel at the state, county, municipal and tribal level to administer the grants;
- The complexity of the grant distribution system;
- Absence of up-to-date and accurate data about the status of grant performance at all levels; and,
- Delays due to vendor delivery timetables for specialized or high demand equipment.

The distribution system was not integrated -- The process used to distribute homeland security related grant funds consisted of a series of interdependent federal, state, tribal, county and municipal administrative, legal, procurement, and grant management processes and protocols. This extraordinarily complex system – which pre-dated 9/11 – was not designed to coordinate and monitor the huge amount of funding that was now being made available to every state and territory as well as thousands of local governments in the nation, to carry out urgent, personnel intensive security measures. And, while there were pre-established mechanisms for the expedited distribution of federally provided funds on an “emergency basis,” in most cases, these mechanisms were not utilized at the state and municipal level.

In FFY 02 and 03, the federal government sought to rapidly disburse considerable amounts of funds while simultaneously establishing a Department of Homeland Security. At the same time, cash strapped state, county, municipal and tribal entities were engaging in (and absorbing the costs of) personnel intensive security efforts for which many believed they would be reimbursed. In addition, state, local and tribal governments did not have the system or personnel in place to handle the enormous increase in funding to support the new mission of homeland security.

During the same time period, many counties and municipalities received homeland security funding via the UASI Program as well as through the State Homeland Security Grant Program (SHSGP). In many of the UASI regions, participating entities established UASI specific decision-making bodies to guide the use of UASI funds to address regional needs. All of these factors contributed to an operational and grant

management environment that can best be described as overwhelming and at times confusing.

There was some misunderstanding of how the system worked -- It appears that at least in some cases state, tribal and municipal officials operated on misconceptions and/or a lack of understanding of key processes associated with applying for and receiving funds for homeland security-related expenditures. It appears that this lack of understanding can be attributed to a combination of: insufficient public education and outreach efforts among and between DHS, states and tribal and municipal governments; and, the lack of clear and documented policies, procedures and best practices for how the grant programs should operate at the state and municipal level. There also were unrealistic expectations at the county, municipal and tribal level that the urgency of the mission could overcome all of the legal, structural, and knowledge gaps in the system. The management of expectations is a very real issue. Every locality expected to receive federal funds, which, because of limited resources, will not happen.

There has been improvement -- The Task Force recognizes that there have been continuous improvements made to the grant system. At the federal level, for FFY 04, DHS ODP has streamlined its process by requiring less up-front paperwork from state, tribal and local governments so that distribution and expenditure of grant funds is expedited. DHS ODP, in its FFY 04 Program Guidance, requires that states work in partnership with federal, county, municipal and tribal governments to develop State Homeland Security Strategies to guide the use of funds provided by DHS. As a result of this, additional improvements are expected as municipal and regional entities within each state develop the comprehensive and compatible operational plans that will support the integrated implementation of each state's homeland security strategy.

Moreover, to further enhance communications and in response to a request from the City of Los Angeles, DHS ODP set up a conference call with DHS ODP Management and the City of Los Angeles, the County of Los Angeles and the State of California to discuss items related to the UASI funding. DHS ODP conducted this phone call in late February 2004, and it was found to be very successful in moving the funding process forward by outlining clearly what needed to be done by all parties to move the money into the hands of those on the front lines.

As a follow up, DHS ODP decided to offer this conference call to the other 29 participants of the UASI Grant Program II. Each mayor of the core city in the urban area was given a direct, written invitation to participate on a call to discuss any grant issues that may be impacting the urban area. These calls were designed to bridge any communication gaps that may exist, and clear up any barriers to current funding flows between the city, county, state and the federal government. As well, DHS ODP and the urban areas could discuss updates on the current funding status and work to resolve any issues that may be impeding the process. DHS ODP regularly briefed the Task

Force on the findings from the calls so as to provide real time grant information in the nation's largest urban areas.

Over a period of three months, 17 cities accepted the invitation to participate. These 17 included: Boston, Cincinnati, Cleveland, Dallas, Denver, Detroit, Honolulu, Houston, Long Beach, Miami, New Orleans, Newark, Phoenix, Pittsburgh, Portland, San Diego, and Seattle. Eight of the cities declined the offer (Baltimore, Buffalo, Chicago, Kansas City, New York City, Philadelphia, National Capital Region, and Tampa), and the remaining four cities (Memphis, Sacramento, San Francisco, and St. Louis) did not answer repeated phone calls and email correspondence extending the offer. These cities were considered "declined by default."

Issues raised in these phone calls included concerns about the ability to expend remaining funds within the allotted time frame, the inability of cities and counties to agree on a funding allocation, DHS ODP timing and process delays, and the concern over the lack of equipment standards.

Some "best practices" are beginning to emerge -- The Task Force found that some jurisdictions have been very innovative in developing mechanisms to support the procurement and delivery of emergency response related equipment. For example, New York State is in the process of forming a "Procurement Working-Group" to deal with problems as they arise. Several states have developed statewide procurement contracts that allow municipal government units to buy equipment and services using a pre-negotiated state contract as the procurement/contract vehicle. These efforts have substantially reduced the length of time it takes for localities to purchase and receive the equipment. For example, the State of Kansas has created a password protected website that allows municipal entities to view their grant allocation balance and place orders for equipment until their funding allocation is exhausted. Under this program the state retains all funds and the locality receives the equipment. Louisiana is moving toward establishing a statewide procurement contract for equipment and services modeled after the federal General Services Administration (GSA) List.

In the area of state, county and municipal coordination, some examples of "best practices" include the following:

- Nebraska emphasizes awareness, education and training so that state, city and county officials have a full appreciation of the grant process. The Nebraska Emergency Management Agency conducted 15 workshops for first responders, county emergency managers and local elected officials regarding the FY 04 homeland security grant process.
- New Jersey has undertaken a unique approach to developing its UASI Program by not limiting its strategic plans to that of one or two major cities in the state. Newark and Jersey City have been designated as the "core cities" of the state's UASI Region

which has been defined as the six contiguous Northeast counties of New Jersey. New Jersey recognizes that the current county structure does not address a regional hazards approach when responding to major incidents. In light of this, FY 04 UASI funding created a regional response capability to include target-hardening measures, in the greater Newark/Jersey City metropolitan area. FY 04 UASI funding built upon priority initiatives being undertaken with FY 03 UASI funding. The regional planning efforts that occurred under both the FY 03 and FY 04 UASI programs form the foundation and become a requirement for implementation of DHS ODP's FY 04 and future year's Homeland Security Grant Program funds in that the allocation and identification of priority initiatives are based upon a regional effort and response capability instead of county-based responses. To date, the State of New Jersey, cities of Newark and Jersey City, and the six participating counties have embodied the spirit of building partnerships and strategic planning through efforts rooted in coordination, cooperation, communication, and clarity.

- Illinois has created a Terrorism Task Force, a policy-making body of more than fifty voting members. The Task Force forges consensus through the work of subject-matter experts organized in ten standing committees and eight working groups to those committees. The Task Force meets each month and its committees report on significant activities and issues discussed and acted upon at committee meetings. Projects that originate from a committee or several committees working together receive budget allocations from the SHSGP award for the state. The budget for funding the strategic priorities of the state, subdivided into state and municipal shares, emanates from this process.
- South Carolina established a State Counter Terrorism Coordinating Council (CTCC) in 2003 to foster cooperation and coordination among various governmental and private entities and disciplines both statewide and regionally. The CTCC is composed of various discipline representatives at the municipal, county, state and federal level. The CTCC Grants Committee makes recommendations for funding priorities consistent with furtherance of the South Carolina's State Strategy. To determine municipal funding priorities, the State Administrative Agency (SAA) required each of the 46 counties to utilize a 5-member committee which met to compose their needs in a grant application. Each county committee was composed of the county sheriff, emergency management director, emergency medical services director, a municipal fire chief and a municipal police chief.
- New York State made a conscious decision at the state level to use federal funding to purchase and equip Mobile Emergency Response Caches also known as WMD Trailers. Over 150 Caches have been deployed throughout the state using a risk-based distribution formula. The Caches include personal protective, detection and decontamination equipment used to support the response to Weapons of Mass Destruction (WMD) incidents. By purchasing in bulk, the state was able to equip municipal jurisdictions with resources they needed and at the same time, allow for a

level of standardization to exist from one jurisdiction to the next. Currently, every county in New York State has at least one WMD Trailer.

More can be done to improve the system -- The Task Force acknowledges that as each state's and region's practices are different, there is no single action that can be taken by DHS, state, county, tribal, and municipal officials that will further enhance the overall grant system. However, there are a number of actions that can be taken at all levels of government that when combined would reduce the time it takes for these critical funds to reach those at the "front lines" of preventing and/or responding to terrorist attacks.

The Task Force believes that ensuring that funds are rapidly accessible to state, county, municipal, and tribal entities must be a top national priority. To date, state, county, municipal and tribal governments across the nation have expended considerable resources securing individual communities and critical assets. The success of our nation's homeland security efforts depends on the federal government's ability to collaborate and coordinate prevention and response activities with its state, county, municipal and tribal partners. The "front lines" of our nation's domestic "War on Terrorism" are in neighborhoods and communities across the United States where law enforcement, firefighters, emergency medical technicians, public works and health care workers live and work.

Arguably, while each at-risk locality must be provided adequate resources to effectively fight this war, no single jurisdiction or response discipline can fight it alone. Effective homeland security efforts require continuous regional collaboration and coordination. Efforts to detect, prevent, respond to, manage the consequences of, and recover from terrorist attacks and "all-hazards" must become ingrained and "second-nature" in the day-to-day business of state, county, municipal, and tribal governments, and the American people. While this new responsibility requires state, county, municipal and tribal governments to devote time, people, and money, they cannot carry out this vital responsibility without adequate operational and financial support from the federal government.

Finally, it has been reported that to date, only minimal homeland security funds have been obligated to tribal governments and some of the obligated funds were not accepted by some tribal governments. The Task Force recognizes that expectations management among all stakeholders specific to funding of tribal entities was, as noted with the entire process, not as effective as needed. Accordingly, the Task Force recommends that states, where applicable, should ensure that tribal governments are better integrated into statewide security planning and funding efforts. The Task Forces requests that DHS monitor this for accomplishment as part of the on-going statewide strategy and planning review process for those states.

Of the funds that have been received, the majority have been used to expand emergency response capacity -- The Task Force found that the vast majority of funds received thus far by state, county, municipal and tribal governments have been spent on emergency response equipment and related training. Obviously, ensuring that all communities achieve and maintain a baseline response capacity for terrorist incidents or other emergencies is – and must remain -- a top priority. However, the Task Force also notes that the loss of life, human suffering, social instability, and financial repercussions that would result from a successful terrorist attack mandates that state, county, municipal and tribal governments take aggressive, objectively measurable, and well planned steps to prevent such an attack from occurring. In FFY 04, DHS has increased flexibility and made all homeland security funds available for “prevention” activities at the state and local level. Accordingly, the Task Force strongly recommends that state and local governments consider allocating these and future resources to enhance the ability of state, county, municipal and tribal governments to detect and prevent future acts of terrorism.

Specific Findings and Recommendations

Expanding and implementing such a massive initiative across thousands of municipal communities, fifty states and six territories in a “crisis mode” using pre-9/11 process was daunting. In terms of the normal (pre-9/11) timeline for federal grant programs, this effort is in its infancy but maturing rapidly. Accordingly, the Task Force does not recommend wholesale changes in the federal grant program, but rather endorses actions that will streamline and accelerate current improvements to procedures and funding efforts.

Through its deliberations, the Task Force developed a number of specific recommendations to address the administrative, regulatory, statutory and operational barriers that adversely impact the speed at which funds are provided to county, municipal, and tribal governments. The Task Force offers these recommendations with the following caveats:

First, some of the legal and procedural protocols that delay the expenditure disbursement of funds are in place to ensure government accountability and any alterations should receive careful consideration.

Second, the speed of disbursement (or “draw down”) by itself may not be the best performance measure to determine whether these (or future) grant programs operate effectively. The purpose of the grant process is to provide funds for the creation and maintenance of capabilities to prevent the loss of life, mitigate human suffering, and effectively respond to the consequences of terrorist attacks. This requires striking a balance between rapid disbursement of funds to address immediate state, county, municipal, and tribal security requirements – such as reimbursement for overtime for critical personnel – and the need to ensure that these funds are utilized in a manner that

best meets the long-term, complex national security requirements of the global war on terrorism in which the nation is engaged. Both are critical.

Finding 1: The reimbursement requirement is problematic. The Cash Management Act of 1990 (P.L.101-453), DHS and Department of Treasury guidelines (31CFR Part 205) require that homeland security funding be provided to state and municipal governments on a reimbursement basis. This is problematic for a number of municipal and county entities because it requires state, county, municipal and tribal governments to incur expenses prior to receiving Federal grant funds. While DHS protocols allow state and municipal entities to receive funds 3-5 days prior to expending their own funds, in some instances, this time frame is insufficient to prevent municipal jurisdictions from having to make payments to vendors in advance of receiving grant funds from DHS or through the state. Many jurisdictions do not have the financial resources to make these advance payments, especially for specialized equipment. Another problem is that many municipal jurisdictions require cash-on-hand in their municipal treasuries prior to commencing the procurement process.

- **Recommendation 1:** As it relates to DHS ODP homeland security grants, for FFY 05 Congress should exempt those funds from the Cash Management Improvement Act of 1990 to allow funds to be provided to state and municipal entities in advance of expenditure for up to 120 days. Concurrently, states and communities should revise appropriate regulations to allow notice of federal grant awards under these programs to serve as the basis for procurement and spending commitments absent the “cash in the bank” and to institute a process for by-passing some administrative processes in matters relating to National Security and the expenditure of these funds.

Finding 2: The need for state, county, municipal and tribal entities to rapidly procure and deploy homeland security related equipment under a federal reimbursement program at times conflicts with state and municipal buying regulations that encourage a deliberate process of acquisition of budgeted necessities at the lowest possible price. Furthermore, some states and municipal governments require the authorization of a legislative body prior to acceptance and/or utilization of grant funds. In some instances, these legislative bodies consider acceptance and procurement related issues on a pre-determined calendar basis (quarterly, semi-annually, etc...). This legislative process can delay a locality from even beginning procurement activities – in some cases for many months. These procedures have been cited as a source of major delay in the expenditure of homeland security grant funds by virtually all of the major reports on first responder grant funding. For example:

“In order for municipal governments to spend grant money, a municipal authority (such as a County Board or City Council) often must provide written approval. Committee staff interviews with state and municipal officials across the country

have revealed that these internal processes for grant approval can slow the pace of first responder funding considerably, even after the municipality obtains state and ODP approval of its application.” Chairman Christopher Cox, “An Analysis of First Responder Grant Funding” House Select Committee on Homeland Security, p. 13, (2004).

“In the individual jurisdictions in the three states for which we obtained documentation we also found that some apparent delays in obligating grant funds resulted from the time normally required by municipal jurisdictions to purchase and contract for items, to prepare requests for proposals, evaluate them once received, and have purchase orders approved by legal departments and governing councils and boards.” Director William O. Jenkins, Jr., “Emergency Preparedness Federal Funds for First Responders”, United States General Accounting Office, p. 9, (2004).

Furthermore, once begun, it can often take additional months for state, county, municipal and tribal entities to issue a Request for Proposal (RFP), evaluate RFP responses, and select a vendor. Expenditures are further delayed when vendors are unable to provide specialized or high demand equipment rapidly because of heavy demand and/or extended design and delivery schedules. This combination of legislative, procurement and vendor delays can sometimes add months, if not years, to the process.

It should be noted that the private sector has enjoyed great success in providing routine private citizen equipment, supplies and goods through volume buying followed by retail marketing using “superstore” or “discount center” concepts. Prices are competitive and product availability is high. DHS may want to examine ways to apply the “superstore” model in the private sector using consortia of vendors or competitive contract. Solutions developed under this initiative should not be exclusive, but a realistic alternative to individual contracting processes by states or benefiting agencies.

- **Recommendation 1:** State, county, municipal and tribal governments should exercise emergency authorities and modify their procurement procedures to allow for expedited acquisition processes for homeland security-related expenditures. Many states have a provision in their state law and /or constitution that allow the chief executive to temporarily suspend existing procurement provisions to meet emergency conditions. It is recommended that these should be recognized for homeland security purchases. This could allow the state, county, municipal and tribal governments to access other contracts, either federal or by another state, that have already gone through the “due diligence” of the public procurement process and to take advantage of the price and terms and conditions therein.

- **Recommendation 2:** DHS should work with state governments to establish multi-state cooperative purchasing consortia to help speed-up purchasing.
- **Recommendation 3:** State, county, municipal and tribal governments in which the authorization of a legislative body is required prior to the acceptance or utilization of homeland security grant funding should work with that legislative body to establish an expedited authorization and appropriation process – particularly when these bodies consider receipt and procurement issues on a pre-determined calendar basis.
- **Recommendation 4:** DHS should work with appropriate federal agencies to expand access to federal procurement systems such as the GSA Schedule. State and municipal procurement regulations should be modified under emergency processes to ensure use of GSA and Defense Department procurement methods are authorized for purchases under these programs.
- **Recommendation 5:** State governments, in coordination with county, municipal and tribal governments, should establish equipment acquisition services and/or purchase critical homeland security related equipment in bulk and distribute same to county, municipal and tribal communities in a manner consistent with the State and Urban Area Homeland Security Strategies. State, county, municipal and tribal procurement laws should be amended to allow state, county municipal and tribal agencies to “piggy-back” on existing bulk purchasing agreements as well.

Finding 3: The lack of national standards guiding the distribution, tracking, and oversight of homeland security related grant funds contributed to delays in disbursement. The lack of these standards made (and makes) effective management of these funds difficult. The Task Force Survey as well as the March 2004 Independent U.S. Department of Homeland Security, Office of Inspector General’s “An Audit of Distributing and Spending First Responder Grant Funds” indicate that states, counties, cities, and tribes all have unique laws, legislative oversight, procurement policies, varying quality of state strategies and spending plans, and municipal pressures that complicated the rapid and effective draw-down of DHS ODP grant funding. In some cases, state, county and/or municipal administrative procedures delayed the expenditure of funds. Furthermore, the lack of common terminology, standard processes and consistent levels of capability has been identified as a major impediment to the speedy distribution and use of these funds.

The Task Force acknowledges that a “one size fits all” approach to prevention and preparedness initiatives would impede individual states, counties, municipalities, and tribal entities from preparing in the manner best suited to their local conditions. However, the Task Force is resolute in its belief that a consistent grants management system across municipalities and states will preserve needed flexibility in terms of

equipment acquisition, planning, training and exercising while providing a much more organized approach and up-to-date data stream in terms of cash flow.

- **Recommendation 1:** DHS, in coordination with state, county, municipal and tribal governments should establish national standards for the management of grant funding.
- **Recommendation 2:** DHS, in coordination with state, county, municipal and tribal governments should develop an automated grant tracking system that would allow for the real time tracking of the distribution and use of homeland security-related funds.
- **Recommendation 3:** DHS, in coordination with state, county, municipal and tribal governments should identify, collect and distribute “best practices.”
- **Recommendation 4:** Recognizing that state, county, municipal and tribal governments of all sizes and resource levels are eligible to receive funding, DHS, in coordination with representatives of state, county, municipal and tribal governments, should develop minimum staffing recommendations for grant and program management personnel – this may require increasing the DHS ODP 3% allocation cap on management and administrative expenses.
- **Recommendation 5:** DHS should continue to expand and enhance the level of training and technical assistance provided to state, county, municipal and tribal officials involved in the management of homeland security-related grants.
- **Recommendation 6:** Congress should establish deadlines for the obligating of grants, when applicable, from one level of local government to another level of local government.
- **Recommendation 7:** DHS should immediately be authorized to establish its own Office of the Comptroller and no longer rely on the service of the Department of Justice Comptroller. DHS ODP continues to rely on the Department of Justice Comptroller to process Grant Award Notices and facilitate cash transfers. This essentially places one of the most important functions outside of DHS leadership and accountability chain and has been a source of delays.

Finding 4: While the development of program guidelines and long-term operational plans are important, there are urgent security needs that must be addressed.

- **Recommendation 1:** Congress should expand the approved uses of SHSGP funds so as to allow state, county, municipal and tribal entities to better address

short term security issues attributed to terrorist threats (for example, municipal governments should be able to use funds provided through SHSGP to offset incremental operational cost including overtime and other personnel costs incurred as a result of threat specific security operations of pre-defined duration).

- **Recommendation 2:** DHS should work closely with other federal agencies, state, county, municipal and tribal governments to establish a comprehensive risk assessment methodology to support the identification of high-risk, high consequence critical infrastructure and major events. DHS should allow grant funds, distributed through states, to be used to directly offset the costs incurred by state, county, municipal, and tribal entities for securing those critical infrastructure and major events identified as high-risk by DHS. Activities to be supported should include: target hardening activities, technological security enhancements, and incremental personnel costs associated with protection activities, including over-time payments for safety forces.

Conclusion

The events of September 11, 2001, set in motion a reactive approach to enhancing America's capability to prevent, deter and if needed to respond and recover from terrorist attacks. The goal has been to move from the ordinary level of capability in communities, states and across the federal government to the extra-ordinary.

We have made progress.

We need to do more.

The introduction of large amounts of federal funding into the activities at the municipal, state and tribal levels has supplemented that which they provided beginning in the moments after the first plane struck the North Tower of the World Trade Center. America's security is not the sole function of any single level of government – in terms of funding, policy or programs. It is a shared responsibility.

The end result is a grant process that has evolved under a microscope without the benefit of the "normal maturity" afforded similar programs over the years and we may not have time for that. The data tells the Task Force one thing - no one action will solve all of the concerns that have been voiced. This is an enterprise problem that demands an enterprise solution. The concerns of many during the past seven months raised legitimate issues that needed to be addressed. That attention has been welcome because we have noted measurable progress on many fronts leading us to believe that the needed momentum is beginning to develop at all levels and the process is rapidly maturing. This is good and positive progress.

The Task Force was challenged to build on this progress and identify actions that would empower more progress and not interrupt the developing momentum. Every member of the Task Force learned something valuable during this process making us better individually and stronger collectively.

The Task Force has also maintained the perspective that America will go through a number of phases in the post-9/11 environment and we have moved from a reactive triage and treatment phase to a resolute and pro-active phase that we control. The grant process is not broken and has made significant improvement over the last two years. But it is not yet operating at the speed or with the flexibility needed.

Those at the municipal, state, tribal and federal level responsible for using these funds have a better understanding of what each needs to do to achieve success. Recommendations for major changes would have only added confusion where clarity is emerging. It is our belief that these recommended actions coupled with expected maturity of the program will result in measurable progress towards making the nation safer, stronger, and better.

Attachment One

Task Force Members and Key Staff

Task Force Members

Chair

The Honorable Mitt Romney – Governor of the Commonwealth of Massachusetts; Homeland Security Advisory Council (State and Local Officials Senior Advisory Committee Chair - SLSAC)

Vice Chair

The Honorable Donald L. Plusquellic - Mayor of Akron, Ohio

States

The Honorable Dirk Kempthorne – Governor, State of Idaho

The Honorable Mark Warner – Governor, Commonwealth of Virginia

The Honorable Ruth Ann Minner – Governor, State of Delaware

The Honorable Michael Balboni - State Senator 7th District, New York

Mr. Richard Andrews - Former president of the National Emergency Management Association (NEMA); Homeland Security Advisory Council (Emergency Response Senior Advisory Committee Chairman - ERSAC)

Mr. Thomas J. O'Reilly - Administrator, Office of the Attorney General
Department of Law & Public Safety, Trenton, New Jersey

Municipal

The Honorable James A. Garner – Mayor, Hempstead, New York

The Honorable Beverly O'Neill – Mayor, Long Beach, California

The Honorable J. Christian Bollwage – Mayor, Elizabeth, New Jersey

The Honorable Nathan Smith – Mayor, Portland, Maine

Ms. Peggy Merriss - City Manager, Decatur, Georgia

The Honorable Anthony Williams – Mayor, Washington, DC; Homeland Security Advisory Council (SLSAC Vice Chair)

Mr. Chuck Canterbury - Fraternal Order of Police Grand President; Homeland Security Advisory Council (ERSAC Vice Chair)

Counties

The Honorable Douglas M. Duncan - County Executive, Montgomery County, Maryland

The Honorable Jane Halliburton - County Supervisor, Story County, Iowa

The Honorable Ralph E. Ogden - Sheriff, Yuma County, Arizona

Mr. Mike Selves - Director, Homeland Security and Emergency Management, Johnson County, Kansas

Tribal

The Honorable Arlen P. Quetawki, Sr. – Governor, Zuni Tribe, Office of the Governor,
Zuni, New Mexico

Staff Points of Contact

Mr. John Cohen, Massachusetts

Ms. Cindy Gillespie, Massachusetts

Mr. George Romanoski, Ohio

Mr. Bill Bishop, Idaho

Mr. George Foresman, Virginia

Mr. Jamie Turner, Delaware

Mr. Jim Sherry, New York

Mr. Robert Caccese, New Jersey

Ms. Cathy Wieder, California

Ms. Susan McKeown, New Jersey

Chief Fred LaMontagne, Maine

Mr. Tim Richardson, Washington DC

Mr. Scott Reilly, Maryland

Ms. Gretchen Thomas, Arizona

Mr. Gary Edwards, Washington DC

Mr. Dalen Harris, National Association of Counties

Ms. Molly Stauffer, National Conference of State Legislatures

Mr. Jerry Murphy, National Governors Association

Mr. Chad Foster, Council of State Governments

Ms. Deborah Rigsby, National League of Cities

Mr. Ed Somers, US Conference of Mayors

Ms. Beth Kellar, International City-County Management Association

Attachment Two

Summary of the FY 03 Omnibus Appropriation

Step 1: Allocation and Award

Following the appropriation of funds by Congress, the grant allocation amounts for each of the 56 States and territories are determined by DHS, in accordance with Congressional direction. These allocations are then presented, along with appropriate program guidance and instruction, in an application kit, which is made available within 30 days of the appropriation. This kit is posted online and sent directly to the Governor-appointed State Administrative Agencies (SAA), which are responsible for the administration of DHS ODP grant funds. There is a 30-day period allowed for the SAA to complete the application and return it to DHS ODP. After the application is reviewed by DHS ODP, a grant award package is generated through the Office of the Comptroller (OC) and an official grant award is issued to the SAA. The review and award of funds typically takes around 30 days.

Step 2: State Obligation and Pass-Through of Funds

Once the SAA receives the grant award package, they must obligate the money to the State and municipal jurisdictions within a pre-determined timeframe of the grant award date; this is a legal requirement per the appropriations language. An obligation is the incurring of a definite commitment which creates a legal liability for the payment of funds for goods and services ordered or received. The SAA is required to obligate not less than 80 percent of the total amount of the grant to local units of government, and must fully execute formal sub-grant awards or purchase on behalf of local units of government to comply with this requirement. A mere allocation or announcement by the SAA of which municipal units of government will receive a set dollar amount is *not* a formal obligation of funds.

Step 3: Budget Detail Worksheets

After the obligation requirement has been complied with by the state, but before municipal jurisdictions can obligate, expend, or draw-down grant funds in their own right, complete budget information detailing how grant funds are to be used must be submitted to and approved by DHS ODP. This is to ensure that funds are expended in a manner compliant with program guidance and requirements. Budget Detail Worksheets for sub-grantees (municipal jurisdictions) are first submitted to the SAA for review, approval, and then submission to DHS ODP. Once DHS ODP approves the worksheets, funds are released to the state, which may then release them to municipal sub-grantees.

Step 4: Municipal Obligation of Funds

Once Budget Detail Worksheets have been approved and funding released, local units of government receiving sub-grants from the SAA are free to obligate those funds at any time. An obligation is the incurring of a definite commitment which creates a legal liability for the payment of funds for goods and services ordered or received. For example, a state or municipal government placing a formal equipment order from a vendor would be an obligation. Funds may be obligated for any purpose that is allowable under the grant program; in the case of DHS ODP's grant programs, the largest category within which funds are expended is equipment.

Step 5: Draw-Down and Expenditure

Once a state or municipal grantee is ready to make an expenditure, that grantee may then arrange payment for that service out of its own accounts (expenditure) while simultaneously drawing down funds from the U.S. Treasury to reimburse for those costs. Per the Cash Management Improvement Act of 1990, grantees may actually draw down funds prior to expending their own funds provided that they expend those funds within three days of draw down, and their state/municipal laws allow for this action to occur. The draw down process is extremely rapid and takes less than 48 hours; grantees use the Phone Activated Paperless Request System (PAPRS) to electronically transfer funds from the U.S. Treasury to their accounts.

Attachment 3

National Association of State Procurement Officer Survey

May 13, 2004

Governor Mitt Romney, Chairman
Mayor Donald Plusquellic, Vice Chairman
Homeland Security Advisory Council Task Force on
State and Local Homeland Security Funding
Room 5126 Washington, D.C. 20528

Re: Procurement

Dear Chairman Romney and Vice Chairman Plusquellic:

Attached please find a summary of the discussions with the Office of the National Association of State Procurement Officials and the results of a survey of their membership.

Consistent with the discussion on the recent conference call, we have also included recommendations for possible consideration. As suggested by Gov. Kempthorne, we contacted the Purchasing Executives for Wal-Mart and Johnson and Johnson who both indicated a willingness to meet and explore the transfers of methods and ideas from the private sector.

Finally, I have attached a letter from NASPO indicating their willingness to assist in the procurement area.

Very truly yours,

Thomas J. O'Reilly
Administrator

TJO/pk
attch.

c: Josh Filler
John Cohen
Robert Caccese

Problem

In order for the Homeland Security grant programs to be successful, recipients of the grants need to purchase and equip first responders with significant quantities of interoperable, technical and personnel protective equipment and provide training on an expedited basis. This responsibility to make these high volume procurements becomes more complicated due to the grant's reimbursement feature which requires the recipient to submit proof of purchase and receipt before any federal money is actually disbursed to the grantee. Grant recipients are generally not familiar with how to proceed in such a manner. Thus, the most common complaint has been that the funds are not disbursed to the local level in a timely manner, so vendors can be paid as in the normal course of business, without requiring modifications to state and local budgetary and financial processes. It is widely acknowledged that these purchases must be made to equip first responders, harden vulnerable, as well as critical targets, and train the personnel as quickly as possible. However, existing procurement processes and fiscal oversight requirements turn the process into a time consuming journey. Grant recipients must internally generate their own 'go ahead' to spend funds they haven't received yet and distribute the items to large numbers of multi discipline personnel, over many government jurisdictions.

Some jurisdictions have been very innovative in developing 'best practice' type models to assist in the procurement and swift, delivery process. Unfortunately, many more jurisdictions are limited by their own procurement laws and processes that are not designed for this type of program. The need of the Homeland Security programs to rapidly procure standardized equipment and rapidly deploy it under a federal reimbursement program is in conflict with state and local buying regulations that encourage a deliberate process of acquisition of budgeted necessities at the lowest responsible price, after careful internal review and with the funding available on a cash basis. The overriding issue becomes how can the federal government in cooperation with the states and local government work together to accomplish our Homeland Security goals without undercutting the procurement limitations that have been individually crafted in each state to guard the integrity of their own purchasing.

Survey

After the last meeting of the Task Force on State and Local Homeland Security Funding, we contacted the NASPO to determine what their experience was in the procurement field with the Homeland Security funded programs.

After several conference calls with the leadership of NASPO, it was decided that an e-mail survey be conducted of their membership to determine the nature of the problem and to identify "best practices" that have been successful.

A survey was circulated which asked:

1. What problems, if any, they had encountered.
2. What solutions (best practices) they had used.
3. Whether federal procurement options had been useful in their procurement programs.
4. What suggestions they had for improvement.

Responses indicate that most jurisdictions have faced difficulties which have delayed their effort to purchase the equipment and deploy it into the field on an expedited basis. Generally, they cited internal disagreement over how the money was to be allocated between local governments and the state; the need to plan; interoperability issues arising out of having many local purchasing entities doing their own buying; conflict between state laws that require public bidding at low dollar thresholds and the desire by or for all purchasing entities to buy the same equipment from the same source; local vendor complaints when federal procurement options are chosen; difficulty in tracking the purchases from start to actual deployment in the field and receiving timely delivery from the vendors chosen. A central theme to these difficulties is that the purchasing laws are quite different from state to state and what may work for one may not in any other.

The solutions mirror the different problems that each has. For example, New York is in the process of bringing a consultant on board and forming a procurement working group within that state to deal with problems as they arise. State-wide procurement contracts, especially for a vendor's entire catalogue, allowing local government units to piggy back on those contracts is being explored.

Louisiana is moving toward setting up state-wide contracts using GSA pricing as a benchmark. Cooperative purchasing with Arkansas on laboratory supplies is also in the works.

Tennessee favors statewide contracts but has not been able to use federal procurement options. Nevada has not used federal procurement options but is considering them. New Jersey uses them with only mixed success.

General Observations

- A. Each of the states polled indicated that they were experiencing problems/issues with the procurement responsibilities associated with the homeland security funding. In many cases they felt there was a lot of "mystery" and confusion surrounding the purchases and in using federal contracts for that purpose. In addition, there seems to be a large degree of difficulty in being able to articulate some of the standards for these procurements and the development of specifications to ensure inter-operability.

- B. Each of the states indicated that the process was slow; there were several delays points and there was a large amount of duplication particularly associated between the state and local level. Many municipalities/counties were doing a formal procurement process for the same items, as well as the state.
- C. Most of the states indicated that there were a lot of problems dealing with the local and state procurement laws. The statutory schemes that are put in place for public procurement to prevent fraud, waste or abuse are neither responsive nor streamlined sufficiently to react to homeland safety type of procurements.
- D. Reimbursement is still a major problem in terms of a case flow perspective.
- E. In many states the fiscal oversight requirements generate many steps that have to be taken before the procurement process can begin. The acceptance of grants, resolutions, budget amendments and appropriating local funding until the federal funds are available all contribute to delays.

Recommendations

1. Further explore the federal contract/prime vendor program. There is a concern about the administration of these programs not being uniform and standard. There needs to be further information provided to the state and local procurement officials as well as the actual federal employees themselves as to what can or can't be purchased, and what procedures should be followed. On a related issue, we should dispel the concern about the 10% surcharge that prime vendor programs usually include. In many cases the amount of money expended in going through a formal RFP process far exceed the 10% surcharge.
2. Cooperative purchasing between or among states that share geographical compatibility is another answer. An example exists among several southern states that do joint laboratory supply purchases. For example, allow Delaware research the best source(s) for PPE suits and empower that state to issue a contract on behalf of New Jersey, Maryland, Virginia and Pennsylvania. Maryland can procure other goods on a mutual basis, etc.. This will not only provide greater leverage in terms of volume of purchases but also may provide for the division of labor, i.e., state A can buy gas masks, state B can buy radiological pagers and state C can buy protection suits.
3. Many states have a provision in their state law and /or constitution that allows their chief executive to temporarily suspend existing procurement provisions to meet emergencies. It is recommended that these could be recognized for Homeland Security purchases. This could allow the state/local government to access other contracts, either federal or by another state, that have already gone

through the “due diligence” of the public procurement and to take advantage of the price and terms and conditions therein. As an example, the following is budget appropriation language being considered in New Jersey:

“In order to ensure the prompt and efficient use of funds appropriated under this act to promote domestic security preparedness through the purchase of equipment, goods and services that are interoperable throughout the state and responsive to the pressing circumstances faced by state and local governments, and notwithstanding the provisions of any law, regulation or Executive Order to the contrary, any purchase by the state or by a state agency or local government unit, of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, appropriated in this or prior fiscal years, may, as an alternative to public bidding, be procured without advertising for bids or rejecting bids already obtained but not already awarded from vendors that shall be either (1) holders of a current state contract for the equipment, goods or services sought or (2) participating in a federal procurement program established by a federal department or agency under the Federal Acquisition Regulation and any agency supplement thereto or (3) have been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All Homeland Security purchases herein shall continue to be subject to all grant requirements and conditions approved by the State Administrative Agency. The director of the Division of Purchase and Property may enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services, using monies on the successful business models that can be applied to the needs of this program.”

4. NASPO is continuing to request information from its members and has offered to explore various methods to improve the process of grant distribution. It is currently working on “comprehensive solution” to address education, state needs assessment and obtaining the required commodities. NASPO further indicated a willingness to join ODP in conducting technical assistance web casts, seminars or workshops on improving the homeland procurement process and providing a test bed for multi-state co-op purchases and access to the various federal contracts.
5. Contact was made with the Vice President for Merchandising and Warehousing for Wal-Mart Corporation and the Vice President for Sourcing for Johnson & Johnson who both indicated a strong willingness to work jointly on an effort to explore the development of public/private procurement process or provide suggestions on possible ideas from the private sector.